

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO.1724/95 WITH CA 2494/95

WITH

FIRST APPEAL NO.1749/95

WITH

FIRST APPEAL NO.1838/95 WITH CA 2681/95

WITH

FIRST APPEAL 1845/95

WITH

FIRST APPEAL 1847/95

WITH

FIRST APPEAL 272 AND 273 OF 1996

WITH

FIRST APPEAL 274/96 WITH CA 814/96

WITH

FIRST APPEAL 276 TO 281 OF 1996

WITH

CIVIL APPLICATION NO.821 OF 1996

WITH

FIRST APPEAL NO.3111/99 WITH CA 1212/91

WITH

FIRST APPEAL NOS.3122, 3123, AND 3127 OF 1999

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

 2. To be referred to the Reporter or not? : NO

 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

 5. Whether it is to be circulated to the Civil Judge? : NO

A'BAD MUNICIPAL CORPORATION

Versus

TEKNO BONAZ PVT.LTD.

Appearance:

MR BP TANNA, Senior Counsel for Appellant

MR KA PUJ, MR BB NAIK, MR DN PATEL, MR MB GANDHI, MS TRUSHA GANDHI, MR ASHIH H SHAH AND MR KM PATEL for respondents.

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.C.PATEL

Date of decision: 07/12/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. These are appeals under section 411 of the Bombay Provincial Municipal Corporations Act, 1949, challenging the judgement and orders passed by the lower court in appeals under section 406 of the said Act. These appeals raise a common question and therefore these appeals are decided by a common judgement.

2. It is contended that the lower court while deciding the appeals under section 406 of the said Act has merely passed cryptic orders, without any reasoning whatsoever. It is contended that the impugned orders do not contain any discussion whatsoever and there is either no reference to the relevant facts upon which the conclusions are drawn or there is inadequate reference to such facts and other relevant facts have been omitted from consideration.

3. On an examination of the impugned orders we find that this submission is more or less justified. This court, while exercising appellate powers under section 411 of the said Act, on a reading of the impugned judgement and orders, has no way of ascertaining as to what weighed with the lower court and why. It is, therefore, not possible for this court to evaluate the validity and justifiability of the impugned orders.

4. It is also possible to state that the strong contention raised by the learned counsel for the appellant that the impugned judgement and orders smack of

non-application of mind is a contention which requires to be upheld. It would be difficult to hold that it is an order which is a speaking order. It is also difficult for this court to hold that the lower court has decided the matter on the basis of clear legal principles which ought to have been applied to the facts of the case.

5. In the premises aforesaid, we have no option but to allow the appeals with no order as to costs and to remand back the matters to the lower court for fresh decision on merits and in accordance with law after affording an opportunity of hearing to the concerned parties, and in accordance with the well settled principles laid down by this Court in the case of Municipal Corporation of Ahmedabad Vs. Oriental Insurance Company, reported at 1994(2) GLR page 1498. It is directed accordingly.

6. Since the appeals have been disposed of, the above civil applications would not survive and are accordingly disposed of with no order as to costs.

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